

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 03-13147
Chapter 7

LOWRY HOLDEN JONES

Debtor

DEBORAH GONYER, DONALD
TANGWALL, and JAMES NEAL

Plaintiffs

v

Adversary Proceeding
No. 03-1129

LOWRY HOLDEN JONES

Defendant

MEMORANDUM

The plaintiff's complaint alleges that the debtor owes her a debt, and the debt can not be discharged in the debtor's bankruptcy case. The plaintiff relies on § 523(a)(2)(A). It excepts from discharge a debt for money, property or credit obtained by false representation, false pretense, or actual fraud. 11 U.S.C. § 523(a)(2)(A). The complaint alleges that the debtor falsely represented that he was a state-licensed contractor when he was not. The question now before the court is whether to grant or deny the debtor's second motion for summary judgment. According to the debtor, § 523(a)(2)(A) requires the plaintiff to prove that he made the false statement with the intent to injure the plaintiff. The debtor then argues that even if he did make the false statement, he did not intend to injure the plaintiff.

The debtor relies on *Kawaahuau v. Geiger*, 523 U.S. 57, 118 S.Ct. 974, 140

L.Ed.2d 90 (1998). That case involved the meaning of “willful” in a different discharge exception, § 523(a)(6). 11 U.S.C. § 523(a)(6). The supreme court held that willfulness requires the intent to cause injury; it is not enough that the injury results from the debtor’s intentional action. Section 523(a)(2)(A) does not require the intent to cause injury. Section 523(a)(2)(A) requires proof that the debtor intended to deceive the plaintiff. But the courts have not required proof that the debtor intended to harm the plaintiff. For example, a debtor who obtains a loan by making a false statement may honestly believe he will be able to pay the debt and may honestly intend to pay it. The debtor’s intent to deceive the lender into making the loan does not necessarily carry with it the intent to cause the resulting injury – the loss caused by the debtor’s failure to pay the debt. The debt can be excepted from discharge under § 523(a)(2)(A) because the debtor’s wrongful act is the proximate cause of the lender’s loss. *Gadtke v. Bren (In re Bren)*, 284 B.R. 681 (Bankr. D. Minn. 2002); *Redmond v. Finch (In re Finch)*, 289 B.R. 638 (Bankr. S. D. Ohio 2003); *Commercial Bank & Trust Co. v. McCoy (In re McCoy)*, 269 B.R. 193 (Bankr. W. D. Tenn. 2001), *but see Berkson v. Gulevsky (In re Gulevsky)*, 362 F.3d 961 (7th Cir. 2004).

The court will enter an order denying the debtor’s second motion for summary judgment.

This Memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P. 7052*.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

[Entered 06/07/2004]